IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3498 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPN

Versus

KEVALRAM SUGNOMAL MULCHANDANI

Appearance:

MR KIRIT I PATEL for appellant.

MR NM KAPADIA for Respondent.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE J.R.VORA

Date of decision: 27/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. It is given out that the Civil Application No.9693/2000 seeking condonation of delay in this Appeal has already been allowed and the delay has been condoned.

2. This Appeal under Sec.411 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the B.P.M.C.Act') is directed against the order dated 28.4.2000 passed by the Small Causes Court No.13 at Ahmedabad in M.V.Appeal No.5031/98 with regard to the premises situated in Ward - Ellisbridge A/2, bearing Survey No.287 + 294/3/C/8. The Corporation had fixed the G.R.V. at Rs.4218/--. Against the fixation of such G.R.V. by the Municipal Corporation the present respondent Kevalram Sugnomal Mulchandani filed Appeal under Sec.406 of the B.P.M.C. Act and prayed that the GRV for the premises in question be fixed at Rs.900/-for the assessment year 1998-99. The Small Causes Court placed reliance on a document with regard to the payment of taxes Mark 10/1. A Certificate issued by the Government Registered Valuer Shri Narendra C. Patel was produced at Mark 10/2 to show the total cost of construction on the land of the premises is Rs.31,206/--. It was urged before the Small Causes Court on behalf of the Corporation that the Report of the Valuer was undervalued and the actual market value of the premises in question is much higher than what was stated in the Certificate. The Small Causes Court fixed the GRV at Rs.2809/-. It is not disputed before this Court that the concerned Valuer was not examined by the respondent herein before the Small Causes Court and on that account, the Municipal Corporation did not get an opportunity to cross-examine the Valuer and Certificate issued by him had been relied upon. Whereas the Valuer was not examined and the Municipal Corporation did not get an opportunity to cross-examine the Valuer, the matter deserves to be remanded to the Small Causes Court for deciding the GRV afresh in accordance with law. The Valuer shall be produced before the Court and examined by the respondent herein and opportunity of cross-examination shall be granted to the Municipal Corporation. Since the matter deserves to be remanded on this ground alone, we have not considered it necessary to go into the other questions, which are raised on behalf of the Municipal Corporation. All the grounds, as may be available to the parties, are left open to be agitated in the remanded proceedings. Mr. Patel submits that under Sec.409 of the B.P.M.C.Act the expert is to be appointed and the Municipal Corporation is desirous of moving a proper Application under Sec.409 of the B.P.M.C.Act. In

case such an Application is moved, the Court may decide the same in accordance with law and in case the Court is satisfied and passes an order to appoint such an expert under Sec.409 of the B.P.M.C.Act, such expert may also be examined on behalf of the Municipal Corporation.

3. The impugned order dated 28.4.2000 passed by the Small Causes Court in Municipal Valuation Appeal No.5031/98 is, therefore, set aside and the matter is remanded to the Small Causes Court for decision afresh in accordance with law and in the light of the observations and directions made in this order. The Appeal is accordingly allowed with no order as to costs.

The Small Causes Court may give priority to this matter to expedite the remanded proceedings.

(M.R.Calla,J)

(J.R.Vora,J)